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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

WT DOCKET NO. 94-147

JAMES A. KAY, JR.

Licensee of one hundred sixty
four Part 90 licenses in the
Los Angeles, California area.

DATE OF CONFERENCE: October 24, 1995

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JAMES A. KAY, JR.)

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 Los Angeles, California area.)
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The above-entitled matter came on for conference pursuant to Notice before Richard L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., on Tuesday, October 24, 1995, at 11:00 a.m.

APPEARANCES:

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I N D E X

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25	Conference began: 11:00 a.m. Conference Ended: 12:05	

P R O C E E D I N G S

(11:00 a.m.)

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3 JUDGE SIPPEL: Good morning. We're here pursuant to
4 my order for a prehearing conference, and at this stage --
5 this time there has been considerable changes to counsel for
6 the respondent party, James Kay. So, I'm going to ask counsel
7 for everyone to identify themselves for the record at this
8 time and let me start with the Bureau first. Mr. Schonman?

9 MR. SCHONMAN: Good morning, Your Honor, Gary
10 Schonman, W. Riley Hollingsworth, William Kellett and Anne
11 Marie Wypijewski, appearing on behalf of the Chief, Wireless
12 Telecommunications Bureau.

13 JUDGE SIPPEL: Good morning. And on behalf of
14 Mr. Kay?

15 MR. FRIEDMAN: Your Honor, for Mr. Kay, Barry
16 Friedman, Bruce Aitken, Robert Keller, Scott Fenske and Curtis
17 Knauss who is temporarily out of the room.

18 JUDGE SIPPEL: Those are attorneys from two --
19 Mr. Keller is practicing independently and then there are
20 attorneys for two different firms. Is that correct?

21 MR. FRIEDMAN: That's correct, Your Honor.

22 JUDGE SIPPEL: Now, is there a lead counsel, anybody
23 in case that my legal tech needs to contact somebody?

24 MR. FRIEDMAN: Yes, I believe I would be serving as
25 -- that's correct.

1 JUDGE SIPPEL: That would be Mr. Friedman?

2 MR. FRIEDMAN: Correct.

3 JUDGE SIPPEL: All right. So, that if we need to
4 notify anybody for short notice on a conference or something
5 like that we can go through you or your secretary and you'll
6 word to everybody else?

7 MR. FRIEDMAN: That's correct. We've established
8 that arrangement so there will be no problem.

9 JUDGE SIPPEL: And Mr. Schonman?

10 MR. SCHONMAN: Your Honor, as a preliminary matter I
11 wonder if we might get some clarification on for the purposes
12 of filing pleadings and completing our certificates of service
13 would it be all right for Mr. Kay's counsel if we identify Mr.
14 Friedman as Mr. Kay's counsel and then
15 Mr. Friedman can distribute copies to all the other counsel in
16 this proceeding who are also representing Mr. Kay?

17 JUDGE SIPPEL: Well, if that's the -- let me just
18 before you answer that, if you're talking about with respect
19 to documents which would be served in the ordinary course,
20 that is through the mails?

21 MR. SCHONMAN: Yes, sir.

22 JUDGE SIPPEL: As well -- now, hand-delivery is a
23 different situation, but well let me hear from Mr. Friedman.

24 MR. FRIEDMAN: Your Honor, we would like service
25 both to my office and to Mr. Aitken's office. We are separate

1 law firms and that way there is no problem if one of us
2 happens to be out of town at a particular time.

3 JUDGE SIPPEL: And how about -- what about
4 Mr. Keller?

5 MR. FRIEDMAN: We'll arrange so Mr. Keller gets
6 documents. We don't want to overdo it with the Bureau, but we
7 feel that two parties is something they can handle.

8 MR. AITKEN: With respect to discovery documents I
9 think it's acceptable to have one or the other so that only
10 one set of answers needs to be filed. We can make copies and
11 distribute them amongst ourselves.

12 JUDGE SIPPEL: Well, we're talking only about
13 pleadings.

14 MR. AITKEN: Yes, sir.

15 JUDGE SIPPEL: Documents is a different -- but thank
16 you for bringing that up. That's true. Documents will only
17 be delivered to whoever the designee is. I guess that will be
18 Mr. Friedman.

19 MR. FRIEDMAN: Right.

20 JUDGE SIPPEL: Now, with respect to the request
21 however, if it's a mailed document, that is, if it's going to
22 be serviced by mail, there's no reason why the service can't
23 be made on both firms, the Aitken firm and the Thompson firm.
24 With respect to hand-deliveries, the Bureau has -- and again,
25 this might be pursuant to my order. I frequently -- if we get

1 into discovery disputes when I resolve it I frequently require
2 that there be hand-delivery of something from the losing side.
3 In terms of a case, particularly the state of this case, I
4 mean that can become a very significant thing in my judgment.
5 But the Bureau is limited in terms of what it has in terms of
6 available people to deliver documents. Let me say for my
7 purposes if I have an order that's going out, as a matter of
8 course I will call one of the attorneys from Mr. Kay's side
9 and they can come and get a copy and distribute it to whoever
10 it may be. I'm getting them by e-mail over to Mr. Schonman
11 and Mr. Hollingsworth. So, in terms of -- but if I order the
12 attorneys to hand-deliver something, I'm going to ask
13 Mr. Friedman and if you want to discuss this and get to me
14 later, but I want somebody from your firm to be available, or
15 if you can arrange for a courier to go over and pick it up
16 from the Bureau.

17 MR. FRIEDMAN: That's fine. We can do that.

18 JUDGE SIPPEL: Okay?

19 MR. FRIEDMAN: Um-hum.

20 MR. FRIEDMAN: Because the Bureau just doesn't have
21 the resources and to me it's important that when it has to be
22 -- when it's done it should be done right away.

23 MR. SCHONMAN: That's fine. Thank you, Your Honor.

24 JUDGE SIPPEL: So then you understand that
25 arrangement?

1 MR. SCHONMAN: Yes, sir.

2 JUDGE SIPPEL: And then anything that you're going
3 to hand-deliver if you'll arrange for that hand-delivery
4 directly to the Bureau, and will you be the designee for that,
5 Mr. Schonman?

6 MR. SCHONMAN: Well, that brings up a good question.

7
8 JUDGE SIPPEL: On the hand-delivery now. Let's just
9 say the hand-delivery.

10 MR. SCHONMAN: On hand-delivery I will be the
11 designated recipient. For pleadings that are filed and mailed
12 to -- filed with the secretary's office and mailed -- would be
13 mailed to the Bureau, I'd appreciate it if a copy be mailed to
14 me as well as Riley Hollingsworth in Gettysburg.

15 JUDGE SIPPEL: Does everybody understand that? I
16 don't intend to reduce that to an order. I think that this
17 should work out all right, everybody understands, and I
18 appreciate that there is that much thought given to this up
19 front and that there will be this kind of cooperation. Now,
20 this case was supposed to have been settled by last Friday and
21 in accordance there was a mutual -- a memorandum of
22 understanding, rather, that was executed by both parties. And
23 I stayed the case at the at the request of the parties in
24 order to accommodate settlement. I understand, I know, I'm
25 much aware of the fact that the Commission has a policy which

1 favors settlement and I would encourage settlement to be
2 continually considered in this case, but we are now at a point
3 where we have to turn to focusing on hearing preparation. And
4 so unless somebody has something specific to tell me about a
5 settlement this morning, and I've read the statements of
6 readiness which were filed yesterday and I understand that
7 Mr. Kay's counsel, you do have -- you will be proposing a
8 settlement within the next couple of weeks. Is that right,
9 Mr. Friedman?

10 MR. FRIEDMAN: That's correct. We will be asking
11 for a meeting with Mr. Schonman and making a further offer.
12 We don't know whether he'll accept it or not.

13 JUDGE SIPPEL: Well, I would encourage those
14 negotiations to get underway as quickly as possible. I don't
15 think it's necessary to just wait until you give them a piece
16 of paper and then talk to them. I mean I'm not telling you
17 how to do it, but I'm encouraging as much as flow of contact
18 and information on that point. As much as you can I would
19 suggest that you do it now because you're going to be really
20 busy in a couple of weeks. In fact you're probably --

21 MR. FRIEDMAN: In fact, we intend --

22 JUDGE SIPPEL: Pardon me?

23 MR. FRIEDMAN: In fact, we intend to solicit a time
24 and place with him right after this prehearing is over.

25 JUDGE SIPPEL: You're welcome to use the courtroom

1 for -- because I know Mr. Hollingsworth is down here now from
2 Gettysburg so, you can have the courtroom for the day as far
3 as I'm concerned.

4 MR. AITKEN: That's acceptable to us. We can begin
5 to talk immediately after this hearing.

6 JUDGE SIPPEL: Well, as I say, I'm not going to
7 order it but the opportunity is there for you to do it and
8 when we break you can talk to Mr. Schonman and
9 Mr. Hollingsworth about, settlement, exchange of documents,
10 witness, anything at all. I'll make the courtroom available
11 to you. Now, the burden of proceeding and the burden of proof
12 is on the Bureau. So, I'm going to ask the Bureau to state
13 its position with respect to readiness. And I understand that
14 there are certain pleadings by the way, that there were
15 certain issues such as motions to compel answers to
16 interrogatories that were kept -- left in abeyance because the
17 pleading cycle had not been completed when the stay was
18 requested and granted. So, those things are to be tended to
19 right away. And as far as your motions to compel which are
20 outstanding, the Bureau's, I would expect a response to a
21 pleading, I'm going to require a response to that pleading by
22 this Friday. I want to get my rulings out next week as much
23 as I can on things that are hanging fire because I'm going to
24 be out of town the week of the 4th of November. So, if
25 something comes up and I'm not here you can -- Judge Stirmer

1 will be here, the chief judge, but only in the event of an
2 emergency and it's something that you really need action on.
3 I'd like to have everything resolved before I leave for that
4 week. Now, there may be some more things besides that one,
5 but that one comes to my mind. It was in the Bureau's
6 statement of readiness and we'll just get to these as we can
7 get to them.

8 MR. SCHONMAN: Your Honor, might I ask a question?

9 JUDGE SIPPEL: Sure.

10 MR. SCHONMAN: Did you dismiss the motion to compel
11 or did you hold it in abeyance?

12 JUDGE SIPPEL: I think I may have -- my ruling may
13 have been a -- it may have been dismissed but consider it back
14 reinstated and it needs to be responded to.

15 MR. SCHONMAN: Okay. So, you're saying a reply by
16 next Friday?

17 JUDGE SIPPEL: That's right.

18 MR. SCHONMAN: Okay.

19 JUDGE SIPPEL: That's right.

20 MR. FRIEDMAN: This Friday.

21 JUDGE SIPPEL: This Friday. Well, it's --

22 MR. SCHONMAN: It's this Friday?

23 JUDGE SIPPEL: Yes.

24 MR. SCHONMAN: Okay.

25 JUDGE SIPPEL: Let me give you a date on that.

1 That's the -- this Friday is the 27th.

2 MR. SCHONMAN: Your Honor, would it be possible to
3 have an additional week to respond since we're - after a four-
4 month stay we're looking at this for the most part anew?

5 JUDGE SIPPEL: Well, let's see, you've got a -- the
6 following week there's a holiday on the 11th, is that right?
7 The Friday?

8 MR. FRIEDMAN: Yes.

9 JUDGE SIPPEL: And the rules do provide for a reply
10 in this context. Is that correct? Motion to compel,
11 opposition and reply or is that not the case?

12 MR. FRIEDMAN: Only opposition on a motion to
13 compel.

14 JUDGE SIPPEL: I thought that's what you were asking
15 for, you were asking for an opportunity for a reply.

16 MR. KELLETT: I think it would help Your Honor if we
17 did submit a reply.

18 JUDGE SIPPEL: Well, I got discretion to do that.

19 MR. KELLETT: Right.

20 JUDGE SIPPEL: I can't be here anyway that week.
21 So, I'll give you till before the holiday -- the day before
22 the holiday to give me a reply.

23 MR. SCHONMAN: We would like to reply.

24 JUDGE SIPPEL: And now wait a minute. Now wait,
25 that's not going to do it. That's not going to do it, because

1 I want to decide that before I leave.

2 MR. KELLETT: Your Honor, we'll file it by the close
3 of business this Friday.

4 JUDGE SIPPEL: Well now, you don't have -- they're
5 going to file their opposition.

6 MR. SCHONMAN: No, they already have.

7 JUDGE SIPPEL: Your opposition has been filed?

8 MR. SCHONMAN: Yes.

9 JUDGE SIPPEL: I wasn't aware of that.

10 MR. KELLETT: We moved for a stay the day after or
11 two days after their opposition and you stayed the case right
12 about the day that our --

13 JUDGE SIPPEL: Then I apologize. I was not up to
14 speed on that. I was acting under the impression that it was
15 just the motion had been filed. The opposition is in? Fine.
16 Can you get your reply in by the 27th?

17 MR. SCHONMAN: Yes, we can.

18 JUDGE SIPPEL: And then you'll have an early answer
19 the week of the 6th. No, no, let me -- hold it one second.
20 No, it will be the week of the 30th. And you'll get a
21 courtesy copy of that to me on the 27th --

22 MR. SCHONMAN: Yes, sir.

23 JUDGE SIPPEL: -- as you always do. Now, that's on
24 a motion to compel that the Bureau -- is there anything else
25 that's outstanding? I can set dates for anything else -- any

1 other procedural motions that are -- or discovery motions that
2 are outstanding?

3 MR. FRIEDMAN: Not that we know of, Your Honor.

4 JUDGE SIPPEL: Well, if there is you're going to
5 have to -- they're going to have to be brought to my attention
6 no later than this Friday if there's anything at all hanging,
7 pending that you want me to focus on. I agree with
8 Mr. Friedman's observation. There was only one thing, there
9 was a right to -- there was some ruling that I made that there
10 was a request that was going to be an interlocutory request
11 for an appeal on. I can't remember, I don't have it right in
12 my mind what it was, but there was something that the former
13 attorneys had indicated that they were going to seek an
14 interlocutory to the Review Board and I -- again, I just said
15 -- I remember specifically stating in an order that there
16 would be five days from the date that we came back into
17 session to take action on that.

18 MR. FRIEDMAN: This is your January 31 order, Your
19 Honor.

20 JUDGE SIPPEL: Okay.

21 MR. KELLETT: No, I think what he's talking about
22 was an order that he denied a summary judgment, motion or
23 something.

24 JUDGE SIPPEL: Right.

25 MR. KELLETT: Summary disposition and that came down

1 | sometime in May from Brown & Schwaninger you're thinking of an
2 | interlocutory asked just after this day to have it certified
3 | to the Commission just as a prophylactic sort of motion.

4 | JUDGE SIPPEL: Mr. Schonman?

5 | MR. SCHONMAN: Your Honor, I have a copy of the
6 | order.

7 | JUDGE SIPPEL: What order number is it? I have my
8 | order file here.

9 | MR. SCHONMAN: It's FCC 95-M-154 released on
10 | July 3, 1995. And Mr. Kellett is right on point, that has to
11 | do with the summary decision.

12 | JUDGE SIPPEL: All right. So, I denied the
13 | permission. That's right, there was a request for permission.
14 | It was denied as moot. And you can renew the request for
15 | permission within five business days. Well, I'm going to give
16 | you until the 27th. You can take a look at it and if you
17 | want me to --

18 | MR. FRIEDMAN: We have it. We have it.

19 | JUDGE SIPPEL: I mean, I don't know, you may not
20 | have an interest in pursuing it.

21 | MR. FRIEDMAN: We'll look at it, Your Honor.

22 | JUDGE SIPPEL: Thank you. Let me know by the 27th.
23 | That's all that comes to my mind are those two items. So, if
24 | there's more, bring it to my attention by the 27th. After
25 | that you're foreclosed from raising anything that precedes

1 this morning. By virtue of these rulings by the way, but I
2 will make it official, I am now -- I am closing the stay in
3 this case. This case is now back in hearing status. It is no
4 longer a stayed case because there's a date reference for
5 that ruling and I will get that out in writing. Which leads
6 us -- the only thing I think that I have now that I wanted --
7 that's giving me concern that I want to focus on is the dates.
8 And I'm offering -- I'm saying before we get to that if
9 there's anything else procedural, anything else that's on
10 anybody's mind that they want to talk about before we go
11 dates? Now, let me set the stage for that. I've gotten your
12 dates, Mr. Schonman, the Bureau's dates and I've gotten
13 Mr. Kay's dates and there's a big gap between those and I'm
14 not even too happy with the dates that you've submitted as far
15 as moving this case along. This case has been around a long
16 time and the Bureau does have the burden of proceeding and the
17 burden of proof and I understand the case was stayed and I
18 understand a lot of things were not done during the stay, but
19 nonetheless there was a lot of work that was going on before
20 we did stay this case. And I also understand, I'm saying all
21 this preparatory perhaps to giving you some news that you're
22 not going to like, but the -- there are budget considerations
23 at this time. If I understand the situation, you just can't
24 get on a plane tomorrow and run out to California and start
25 interviewing witnesses. Am I correct on that?

1 MR. SCHONMAN: That's correct.

2 JUDGE SIPPEL: We have to wait till after when,
3 November 15th for the -- do you know of a date that we're
4 talking about that you would have money to move on this? I
5 think it's around the middle of November, I think, unless, you
6 know, some disaster occurs and then, you know --

7 MR. HOLLINGSWORTH: The drop dead date right now is
8 November 15th and I'd hope we'd know right after that.

9 JUDGE SIPPEL: November 15th. So, for purposes of
10 planning here we should -- the Bureau should be prepared to
11 move rapidly after -- as soon after November 15th as possible
12 to get out there on the West Coast. You said that you wanted
13 to inspect all the stations. And Mr. Friedman, you'll make
14 all the resources available out there, or at least the
15 cooperation will be there?

16 MR. FRIEDMAN: Sure.

17 JUDGE SIPPEL: They'll let you know what ones they
18 want to see and -- I don't know if you want to just drop in on
19 them. I don't know how you want to do that.

20 MR. FRIEDMAN: I think certainly we should have a
21 schedule and we can make things available.

22 JUDGE SIPPEL: You do have inspection rights under
23 the Act don't you?

24 MR. SCHONMAN: Yes, we do. We can arrange that with
25 Mr. Kay's counsel as to the procedures we'll use in that respect.

1 JUDGE SIPPEL: Well, you're in litigation now and I
2 -- I mean, I say that because I don't want to get ahead of the
3 Bureau. I don't want to get ahead of either party on this in
4 terms of how you want to think through this preparation, but
5 if things are not getting done because there's not notice
6 being given or people are coming to me -- the parties are
7 coming to me and complaining that somebody is going around
8 their back or something, I mean it's going to get -- this is
9 going to get really testy. We don't want to do that. And you
10 haven't even suggested that you would do it, but I'm just
11 getting that right out on the table right up front. I urge
12 the parties to cooperate in terms of lining things up, dates.
13 I think as I see this case there are going to be witnesses
14 starting of course even with Mr. Kay, but there are going to
15 be other witnesses who would be called by both sides. We
16 don't want the same witness to be brought in at different
17 times of the hearing. Let's get the witness on the stand and
18 let's complete with that witness regardless of who has called
19 him or her first. So, I'm saying this in a general way to say
20 that please focus on what you're doing. Don't duplicate
21 efforts, don't annoy witnesses with double visits. Get -- if
22 you're going to interview a witness that looks like it's going
23 to be a key witness, let's get a deposition notice so both
24 parties can be there. Somehow or other be very much aware of
25 that. And I'm sure you will be, but I want to just say that

1 up front because money is tight these days and we have a time
2 problem with this case in the sense that it's just getting
3 stale, it's been around too long. Go ahead.

4 MR. SCHONMAN: Your Honor, in terms of timing, one
5 thing I'd like to bring to your attention. If Your Honor
6 grants the motion to compel, and you've given us permission to
7 file our response this Friday, the information that Mr. Kay
8 would be required to turn over we anticipate would be quite
9 voluminous and that is a matter which might affect the timing
10 of this case as well.

11 JUDGE SIPPEL: You mean there's -- now, as I recall
12 being very much involved in the history of this case there was
13 considerable document disclosure that was made to the Bureau
14 before we stayed this case. Am I correct on that?

15 MR. SCHONMAN: Yes, and there was a considerable
16 amount withheld.

17 MR. FRIEDMAN: Your Honor, as you're aware, under
18 the rules you have the power to set the times for document
19 response if you should grant a motion to compel and we would
20 expect that you would give us sufficient time based on how
21 much of that you grant or don't grant.

22 JUDGE SIPPEL: Certainly. I have always acted that
23 way. I mean, you have to have time to get your documents
24 together, get them organized and that's another thing that I
25 want to be sure. I only say this once. I mean, I have no

1 reason to assume that it wouldn't be done this way, but be
2 sure that these documents are categorized and given in a
3 usable fashion to the Bureau, not just here's the documents.

4 MR. SCHONMAN: But I bring this matter up, Your
5 Honor, in setting dates --

6 JUDGE SIPPEL: I understand. I understand.

7 MR. SCHONMAN: -- that sufficient time would have to
8 be afforded to Mr. Kay's counsel to amass all the information
9 and provide it to the Bureau, assuming that you do grant the
10 Bureau the relief it's requesting.

11 JUDGE SIPPEL: I understand that, but you're going
12 to get the -- assuming that you get the documents, and
13 certainly it's my -- the interest that I have in this case is
14 to sure that the Bureau gets all the documents that they are
15 entitled to and that they need in order to present their case
16 subject of course to privilege. But I mean, relevancy, I
17 don't want to spend a lot of time arguing about relevancy
18 because if there are business documents of Mr. Kay's and they
19 fall within the time frame of what's being charged in this
20 case then presumptively they're relevant. As I said, subject
21 of course to privileges. But okay, we'll take that into
22 consideration. But still even assuming that, Mr. Schonman,
23 what I'm saying is, is assuming even that you're going to
24 have a voluminous amount of documents to go through, you got a
25 trial staff there, you all are pretty familiar with the issues

1 in this case by now and it's going to take you a couple of
2 days to get back to speed. You're going to have time to get
3 back to to speed because you can't go out and travel until
4 after you get money anyway. But as I say, once you get that
5 money I would expect that you're going to have a team that's
6 going to be out there looking at these stations while somebody
7 is back here looking at the documents and getting people lined
8 up to which -- to whom you want to talk -- with whom you wish
9 to talk. The statement of readiness of Mr. Kay I was somewhat
10 pleased to see has a list of people in Schedule A. I mean, at
11 least they are focused on certain people who are going to be
12 testifying in this case. I have no idea in terms of what the
13 numbers are that you're going to need. That's got nothing to
14 do in terms of the number that you may want to talk to. I
15 understand you go out and you talk to anybody out there that
16 has -- might have information who is willing to talk to you.

17 MR. FRIEDMAN: Your Honor, could I interject
18 something?

19 JUDGE SIPPEL: Just a minute. You've only
20 identified Lawrence Sobel (phonetic sp.) and Donald Petrone
21 (phonetic sp.) as specific individuals that you would be
22 interested in deposing and probably calling as a witness. And
23 are there going to be many more beyond those?

24 MR. SCHONMAN: Well, certainly Mr. Kay, but --

25 JUDGE SIPPEL: Yeah, Mr. Kay also.

1 MR. SCHONMAN: -- you're talking witnesses at the
2 hearing or depositions?

3 JUDGE SIPPEL: Well, I'm getting ahead of you. I'm
4 assuming that if you're going to depose these people, you
5 focused on these people that there's a good chance that you're
6 going to name them for purposes of testifying at the hearing
7 also. There is a good chance of that.

8 MR. SCHONMAN: There is a good likelihood. Yes,
9 sir.

10 JUDGE SIPPEL: And it sounds to me like -- it looks
11 to me like really you've only got -- you've only focused on
12 three -- let me say three key witnesses, my terminology, and
13 that's Mr. Sobel, Mr. Petrone and of course Mr. Kay. And I'm
14 trying to get a feel. Do you think there are going to be many
15 more?

16 MR. SCHONMAN: Many more people we want to depose or
17 many people -- many more people who would testify at the
18 hearing?

19 JUDGE SIPPEL: Well, let's start with deposing as
20 opposed to talking to them.

21 MR. SCHONMAN: Deposing? In addition to the three
22 we've referenced, I suppose there could be another --

23 JUDGE SIPPEL: Five?

24 MR. SCHONMAN: Maybe up to five more.

25 JUDGE SIPPEL: So, you're only talking about eight

1 people?

2 MR. SCHONMAN: Yes.

3 JUDGE SIPPEL: And then --

4 MR. SCHONMAN: And these are very much I don't want
5 to say speculative, but at this stage we're not able to state
6 with any assurance the total number of people we want to
7 depose.

8 JUDGE SIPPEL: Right, but I think I'm right in
9 assuming that you're giving me more -- a fairly good accurate
10 estimate of what you would anticipate doing out there with
11 depositions.

12 MR. SCHONMAN: I propose to characterize it as a
13 ball park figure. Based on the documents that we get, the
14 information that Mr. Kay provides in response to the motion to
15 compel assuming that you do grant the relief we're requesting,
16 it may reveal other persons we want to depose.

17 JUDGE SIPPEL: Well, I know. All bets are off once
18 you see -- if you see something else all bets are off. But
19 right now based on what you know about the case now, what
20 you've been through as far as documents and describing all --
21 you got a pretty good ball park figure of eight as being the
22 target number for deposing give or take?

23 MR. SCHONMAN: Yes, sir.

24 MR. FRIEDMAN: Your Honor, obviously based on your
25 order we felt we were responsible for providing you names and

1 we went to a great deal of effort to give you the names and
2 we're concerned that the Bureau is holding back because like
3 the Bureau we have to visit people and we have to conduct
4 discovery and I think we're being disadvantaged here. And
5 again, it's their case. They're the prosecutor here. They've
6 been responsible for going forward. Why is their case
7 dependent on our documents? Certainly they've had to do the
8 work here and I think we are entitled to shortly, maybe not
9 today, but certainly very promptly the names of the people
10 they are going to go forward with. We don't want to be
11 disadvantaged. We put our cards on the table. We want to see
12 their cards.

13 MR. SCHONMAN: Your Honor, may I respond?

14 JUDGE SIPPEL: Yes, please do.

15 MR. SCHONMAN: On the exchange date, that is when
16 the Bureau will present to Mr. Kay's attorneys the witnesses
17 that we intend to have testify at the hearing. That's the
18 date when we, when we go forward and present our case.
19 Anything before that is discovery. We're not required at this
20 time to give a definitive list of witnesses we intend to have.
21 On the exchange date Mr. Kay's attorneys will know who the
22 witnesses are and the nature of their testimony.

23 JUDGE SIPPEL: Yes, I understand that and I'm not
24 trying to cut you off on responding to that, Mr. Friedman, but
25 my point is -- his point is that I had asked for this in my

1 order for one thing. I asked you to list witnesses.
2 Obviously I know it's not going to be all the witnesses that
3 you -- because you don't know who they're all going to be and
4 you've really indicated only three, they've indicated more
5 than three. It's going to be -- you're going to reach a point
6 where you're going to have to, you're going to have to go out
7 and buy airline tickets for purposes of going out and taking
8 depositions of people and they're going to know about that.

9 MR. SCHONMAN: Of course. They will be able to attend
10 the depositions.

11 JUDGE SIPPEL: That's right.

12 MR. SCHONMAN: And we anticipate a ball park
13 figure --

14 JUDGE SIPPEL: So, I'm trying to move it up a little
15 bit.

16 MR. SCHONMAN: -- approximately eight people. We
17 know now three individuals, we've identified the three. In
18 terms of depositions there may be more than three. We think
19 there could be as many as eight.

20 JUDGE SIPPEL: Right.

21 MR. SCHONMAN: I think Mr. Friedman is asking the
22 Bureau to present its case on October 24th, 1995. We're not
23 prepared to present our case now, we're not required to. I
24 think it's absurd for him to ask for a definitive list of
25 witnesses who are going to sit in this seat or in a witness